

### **REMARKS**

Applicants thank Examiner Sullivan for the review of the pending application. Claims 1 and 2 are currently amended. Support for the amendments is found in, at least, paragraphs 9-11 and 17-20 of the published application. No other claims are pending in the application, and no new matter is added.

### **35 U.S.C. § 102(b) Rejections**

Claim 1 was rejected under 35 U.S.C. § 102(b) as being allegedly anticipated by Peterson, JR et al (2001/0044393). Applicants respectfully traverse this rejection.

For a reference to anticipate a claim under 35 U.S.C. § 102(b), it must teach each and every element that is recited in the claim, as it is arranged in the claim and in as complete detail as is contained in the claim. MPEP 2131.

Amended claim 1 recites “*an insect- and plant pathogen-pesticide*” in the body of the claim, and not in the preamble of the claim. Additionally, Applicants have removed any arguably functional language (the prepositional phrase) from the claim. Thus, with these changes, the Examiner can not describe the *insect- and plant pathogen-pesticide* language as an “intended use” rather than an affirmative claim recitation. One of skill in the art, based upon the specification paragraphs 17-20, would readily understand that this refers to a specific class of pesticides that are effective for controlling insects and plant pathogens. *In haec verba* support in the specification for the exact arrangement of terms is not required. MPEP 2163.02. Thus, amended claim 1 clearly recites language beyond a mere “intended use,” and that language must be considered for patentability.

By contrast, the cited reference (Peterson) does not disclose *an insect- and plant pathogen-pesticide*. Rather, Peterson describes a “rinse-off antimicrobial liquid *cleaning* composition.” See Peterson [title]. There is no disclosure, express or inherent, that the Peterson composition is an insect pesticide or a plant pathogen pesticide. Indeed, the specific species identified in Peterson are bacteria that emerge on human skin such as *E. coli*, *S. aureus* and *S. marcescens*. Thus, Peterson cannot anticipate amended claim 1 for at least this reason.

Moreover, amended claim 1 recites “*hydrogenated starch hydrolysate as an active pesticide.*” Support for this amendment is in the specification at paragraph 0009. One of skill in the art, based upon the specification paragraph 9 that hydrogenated starch hydrolysate is an active pesticide since it is described as an “effective constituent” of a pesticide. *In haec verba* support in the specification for the exact term (i.e., “active pesticide”) in the claim is not required. MPEP 2163.02. By contrast, the Peterson composition derives its antimicrobial activity from cationic surfactants such as a “quaternary ammonium compound.” The quaternary ammonium compounds have effects “against a range of bacterial species” and are “non-irritating to the skin....” See Peterson [0009; 0011; 0024]. There is no disclosure in Peterson, express or inherent, of hydrogenated starch hydrolysate as an active pesticide that can be used in combination with alkyl glucoside to form “*an insect- and plant pathogen-pesticide.*” Thus, independently, Peterson cannot anticipate amended claim 1 for this reason.

Applicants also assert that Peterson does not render claims 1 or 2 obvious for at least the reasons that Peterson is from a non-analogous art, and that one of skill in the art looking to Peterson would seek to use cationic surfactants for antimicrobial activity, not hydrogenated starch hydrolysate for pesticidal activity. Thus, Applicants believe the amended claims are patentable over Peterson.

### **CONCLUSION**

Applicants believe any fee due has been addressed in the accompanying transmittal, however, if any additional fee is due, please charge our Deposit Account No. 18-0013, under Order No. OTA-0007 from which the undersigned is authorized to draw. To the extent necessary, a petition for extension of time under 37 C.F.R. § 1.136 is hereby made, the fee for which should be charged to such deposit account number.

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Amendment dated July 9, 2010  
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Respectfully submitted,

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